

Appl. No. 10/659,100  
Atty. Docket No. 9031  
Amdt. dated Dec. 12, 2006  
Reply to Office Action of March 23, 2006  
Customer No. 27752

REMARKS

Claim Status

Claims 6-10 are pending in the present application. No additional claims fee is believed to be due.

Claims 1-5 and 11-18 are canceled without prejudice.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Drawings

The Office Action states that the drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "630" and "636" have both been used to designate voids, spaces, holes or apertures. The Office Action requests corrected drawing sheets in compliance with 37 CFR 1.121(d), stating that this is required in reply to the Office Action to avoid abandonment of the application.

Applicants assert that the reference character "630" does not appear in any of the drawings submitted with this case, however, it is used in the Specification. Applicants have amended the specification to correct the typographical error that states reference character "630" rather than "636" in the Specification to reference the voids, spaces, holes or apertures.

Claim Objections

The Office Action states that Claim 8 is objected to because the term "polyvinylpyrrolidone" should read "polyvinylpyrrolidone." Applicants have amended Claim 8 to overcome this objection.

Claim Rejections

- 1) Claims 6, 8, and 10 are rejected under 35 USC §102(e) as being anticipated by U.S. Patent Appl. No. 2002/0061329.

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The Office Action states Claims 6, 8 and 10 are rejected under 35 USC §102(e) over U.S. Patent Application No. 2002/0061329 (hereinafter "Leaderman"). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), MPEP §2131 (emphasis added). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989), MPEP §2131. The elements must be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990). Appellants respectfully submit that the 35 U.S.C. §102(e) rejection is improper because the reference cited by the Examiner does not expressly or inherently teach each and every element set forth in the claims.

The Office Action states that Leaderman teaches wound dressings for the oral cavity that may also be used to whiten teeth. The Office Action further states that water hydratable polymers used to make the gels include vinyl polymers. The Office Action concludes that the teaching of a carrier for the gel formulation such as a gauze, sponge or other sheet that can become impregnated with the gel formulation discloses coating a mesh and at least partially filling the mesh.

Applicants assert that the claims are not anticipated by the cited references, as the references fail to teach a film comprising at least two polymers, wherein at least one of said polymers is water hydratable and a tooth whitening agent. The disclosure cited in the Office Action as well as the examples included in the specification disclose a single polymer, not two or more polymers. Further Applicants assert that the cited reference fails to disclose a packaged tooth whitening product comprising a film comprising an insoluble additive selected from the group consisting of calcium phosphate, pyrophosphate, and titanium dioxide. Therefore, the reference cited does not disclose each and every element of the claimed invention and does not anticipate the claimed invention.

2) Claims 6, 8-10 are rejected under 365 USC §102(e) as being anticipated by U.S. Patent Appl. No. 2002/0141950.

The Office Action states Claims 6, and 8 to 10 are rejected under 35 USC §102(e) over U.S. Patent Application No. 2002/0141950 (hereinafter "Chen"). "A claim is

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anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), MPEP §2131 (emphasis added). “The identical invention must be shown in as complete detail as is contained in the ... claim.” Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989), MPEP §2131. The elements must be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990). Appellants respectfully submit that the 35 U.S.C. §102(e) rejection is improper because the reference cited by the Examiner does not expressly or inherently teach each and every element set forth in the claims.

The Office Action states that Chen teaches whitening composition comprising a whitening agent and polyvinylpyrrolidone, which may be placed on a strip and delivered to the teeth. The Office Action further states that the strip may be made from materials such as polymers, natural and synthetic wovens, non-wovens, foil, paper, rubber and combinations thereof. The Office Action concludes that the woven and non-woven may have a mesh structure.

Applicants assert that the claims are not anticipated by the cited references, as the references fail to disclose a packaged tooth whitening product comprising a film comprising a water insoluble additive selected from the group consisting of calcium phosphate, pyrophosphate, and titanium dioxide. Therefore, the reference cited does not disclose each and every element of the claimed invention and thus does not anticipate the claimed invention.

**3) Claim 7 is rejected under 35 USC §103(a) as being obvious over U.S. Patent Appl. No 2002/0141950 in view of U.S. Patent No. 6,146,655.**

Claim 7 is rejected under 35 USC §103(a) over U.S. Patent Application No. 2002/0141950 (hereinafter “Chen”) in view of U.S. Patent No. 6,146,655 (hereinafter “Ruben”). This rejection is traversed. Applicants assert that neither Chen nor Ruben alone or in combination discloses all elements of Claim 6 from which Claim 7 depends. Therefore, the claimed invention is unobvious and that the rejection should be withdrawn.’

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To establish a *prima facie* case of obviousness the Office Action must state that the reference teachings “appear to have suggested the claimed subject matter” *In re Wilder*, 429 F.2d 447, 166 USPQ 545, 548 (C.C.P.A. 1970). The Office Action must explain why the reference suggests the claimed subject matter, rather than just general aspects of the claimed invention. “It is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.” *In re Fine*, 837 F2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

Neither Chen nor Ruben teach or suggest all of the claim elements of Claim 7 and, therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03). The Office Action cites Chen as disclosing the whitening composition applied or coated onto the strip of material which meets the requirement of the composition being a film. The Office Action further states that the strip of material disclosed in Chen can be less than 1 mm thick, and states “the reference differs from the instant claims insofar as it does not teach the diameter of the fibers to be 1 to 200 microns.” The Office Action states that Ruben teaches oral bandages and drug delivery systems. The Office Action further states that the fibers have an individual length of at least 3mm, and preferably in the range of from about 2 mm to about 4mm.... “there should be at least one order of magnitude difference between the diameter and length of the fibers.” The Office Action concludes that the fibers will have a diameter of 200 microns when the length of the fibers is 2mm. However, as stated in the Office Action “the reference differs from the instant claims insofar as it does not teach the fibers form a mesh and the compositions include a tooth-whitening agent.” The Office Action concludes that ‘it would have been obvious to one of ordinary skill in the art to have used the fibers in the strips of the primary reference motivated by the desire to use material that would reinforce the gel compositions when wet and placed in the mouth as taught by the secondary reference.”

Applicants assert that neither reference cited in the Office Action discloses a packaged tooth whitening product comprising a film comprising an insoluble additive selected from the group consisting of calcium phosphate, pyrophosphate, and titanium dioxide. Therefore, the references cited alone and/or in combination do not disclose each and every element of the claimed invention.

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The Office Action states it would have been obvious to use the fibers in the strips disclosed in Chen motivated by the desire to use material that would reinforce gel compositions when wet and placed in the mouth as taught by Ruben. Applicants assert that the Office Action has pointed to no disclosure in either reference which would motivate one skilled in the art to combine an intra-oral bandage and drug delivery system with a tooth whitening film. Ruben discloses soaking the bandage in an oral composition for a length of time and then applying to the oral surface. (Specification Col. 7, Lines 33-60) Ruben also discloses applying a powdered composition to the oral bandage which must be wetted prior to application to the oral surface. (Specification Col 6, Lines 1-20 and Col. 7, Lines 1-4) Ruben fails to disclose a packaged oral product comprising a film or any motivation to use the oral bandages disclosed in Ruben with a film. Finally, neither reference includes any disclosure which would suggest modification to arrive at the claimed invention, as neither invention discloses a film which comprises an insoluble additive selected from the group consisting of calcium phosphate, pyrophosphate, and titanium dioxide. Therefore, Applicants assert that the present invention would not have been obvious over Chen in view of Ruben.

Conclusion

Early and favorable action in the case is respectfully requested. In view of the above, Applicants respectfully request reconsideration of the application and allowance of all of the claims.

Respectfully submitted,

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